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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. REGINALD LAMONT WHEELER, Defendant and Appellant.	B211826 (Los Angeles County Super. Ct. No. TA099213)

APPEAL from a judgment of the Superior Court of Los Angeles County. Jerry E. Johnson, Judge. Affirmed.

Gerald Peters, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Susan D. Martynec and Lance E. Winters, Deputy Attorneys General, for Plaintiff and Respondent.

Reginald Wheeler pleaded no contest to possession of a short-barreled shotgun. He appeals, contending that the prosecution failed to prove that the warrantless search of his car was lawful. We disagree and affirm.

BACKGROUND

The information charged Wheeler with one count of possession of a short-barreled shotgun or rifle in violation of Penal Code section 12020, subdivision (a)(1).[1] Wheeler initially pleaded not guilty and brought a section 1538.5 motion to suppress evidence. After the court denied the motion, Wheeler pleaded no contest to the charge. The court placed Wheeler on probation for a term of 36 months, ordered him to serve 270 days in jail, and imposed various fees. The court also credited him with 93 days of time served. Wheeler timely appealed pursuant to section 1538.5, subdivision (m).

The evidence introduced at the suppression hearing showed the following facts: At approximately 1:00 a.m. on August 15, 2008, deputy sheriff Diana Petty saw Wheeler and two other individuals standing around Wheeler's car, which was legally parked on the street. Wheeler and the other two individuals were drinking alcohol. Petty arrested Wheeler and the other individuals for drinking in public in violation of Carson Municipal Code section 4200.5.

Petty had Wheeler's car towed because Wheeler "said he didn't want to leave it there, and there was no one else to give it to." In the course of an inventory search of the car, Petty opened the trunk and saw that it contained a duffel bag, which was sufficiently open for her to see a shotgun inside it. The gun's barrel measured approximately 15.5 inches long, and the end appeared jagged as if it were "sawed off." The shotgun appeared to be fully operational.

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[1] All subsequent statutory references are to the Penal Code unless otherwise indicated.

DISCUSSION

During Petty's testimony, the prosecution failed to question her about whether the sheriff's department had a procedure for conducting inventory searches of cars. The court, however, asked Petty the following question: "There was a procedure established when a deputy or officer impounds a vehicle. Are you aware of that procedure?" Petty responded, "Yes, sir." The court then asked, "Did you follow that procedure?" Petty replied, "Yes, sir."

Wheeler argues that his suppression motion should have been granted because "the prosecution presented insufficient evidence that the inventory search was conducted in compliance with well-established and delineated department policy." We are not persuaded.

Warrantless searches are presumptively unreasonable unless they fall within a few well-delineated exceptions. (*Minnesota v. Dickerson* (1993) 508 U.S. 366, 372; *People v. Williams* (1999) 20 Cal.4th 119, 127.) Inventory searches of police-impounded cars are one well-recognized exception to the warrant requirement because they serve "to protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger." (*Colorado v. Bertine* (1987) 479 U.S. 367, 372.) "Because of the risk that an inventory search will be 'a ruse for a general rummaging,' . . . a valid inventory search must adhere to a preexisting policy or practice." (*People v. Williams, supra*, 20 Cal.4th at p. 138.) "This rule may require the prosecution to prove more than the existence of some general policy authorizing inventory searches; when relevant, the prosecution must also prove a policy or practice governing the opening of closed containers encountered during an inventory search." (*Ibid.*) Because the shotgun in this case was located in plain sight within an open duffel bag, the prosecution was not required to prove a policy or practice governing the opening of closed containers, but rather only a "general policy authorizing inventory searches." (*People v. Williams, supra,* 20 Cal.4th at p. 138; see also *Harris v. United States* (1968) 390 U.S. 234, 236 ["[O]bjects falling in the plain view of an officer who

has a right to be in the position to have that view are subject to seizure and may be introduced in evidence"].) Petty testified that the sheriff's department had such a policy and that she abided by it when conducting the inventory search of Wheeler's car. Her testimony constitutes substantial evidence that the sheriff's department had an established policy authorizing inventory searches and that she followed it.

Wheeler argues that the evidence "did not establish that the Los Angeles County Sheriff[']s Department] has in place a standard . . . policy or procedure regarding inventory searches of closed car trunks or containers in closed car trunks, and that deputy Petty complied with that established policy." The argument fails because Wheeler cites no authority for the proposition that a policy specifically addressing "closed car trunks" is required. Any "general policy authorizing inventory searches" of cars (*People v. Williams*, *supra*, 20 Cal.4th at p. 138) will authorize a search of the trunk. And no specific policy concerning "containers in closed car trunks" was required either—once Petty opened the trunk (pursuant to the policy authorizing inventory searches), she saw the shotgun in the duffel bag, which was open.

Wheeler also argues that the trial judge "abandoned its role" as a neutral arbiter when he questioned Petty about the inventory procedure. Wheeler did not timely object to the judge's questioning, however, so he failed to preserve the issue for appellate review. (*People v. Cook* (2006) 39 Cal.4th 566, 598.) In any case, as Wheeler concedes, "it is not merely the right but the duty of a trial judge to see that the evidence is fully developed before the trier of fact," and "[t]he power of a trial judge to question witnesses applies to cases tried to the court as well as to a jury." (*People v. Carlucci* (1979) 23 Cal.3d 249, 255.) The trial judge did nothing improper in questioning Petty about the inventory procedure.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

JOHNSON, J.